

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5898 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
  2. To be referred to the Reporter or not? -
  3. Whether Their Lordships wish to see the fair copy of the judgement? -
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
  5. Whether it is to be circulated to the Civil Judge?  
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CHIMANBHAI BULAKHIDAS SUTHAR

Versus

STATE OF GUJARAT

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Appearance:

MR RK MISHRA for Petitioner  
MRS. VK PAREKH for respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH  
Date of decision: 28/07/98

ORAL JUDGEMENT

Heard the learned advocate for the petitioner and learned A.G.P. Mrs. V.K. Parekh for the respondents.

2. The petitioner was appointed as a daily rated employee on 22nd December, 1971 in the department of the respondents no. 2 and 3. He was entrusted the work of "Suthar" (carpenter). He had already passed matriculate

examination before joining the department and he has been discharging his duties since then. The petitioner was absorbed on work-charge post of Suthar with effect from 21st August, 1981. According to the respondent no. 3, it was the date 21-8-1980. The employees working on Muster Roll as daily wagers in the office of the Public Works Department were directed to be taken on work charge establishment by the Resolution dated 4-7-1973. The employees employed on the work charge establishment were required to possess requisite qualifications such as education qualification, experience, age limit etc. But upper age relaxation was being given to such employees keeping in mind the long years of service rendered so as to enable them to be taken on the work charge establishment.

3. The petitioner gave the list of 10 persons junior to him in the Anneuxre-B who have also joined as Mazdoors with matriculate qualification as daily rated employee, have been given charge of clerk, store clerks, typist. Arunbhai Manishanker Pandya who was junior and similarly situated was made clerk with effect from 21-8-1983. The persons shown at Sr. Nos. 1, 2 and 3 were holding important post of the Union such as Secretary, President and Accountant. They were given the charge of the post of clerk, work charge mistry clerk by neglecting the case of the petitioner and adopted pick and choose policy. The petitioner moved several representations to the Deputy Executive Engineer and then the Executive Engineer and then the Minister of the concerned department, but all in vain. The Government of Gujarat has passed another Resolution dated 1-8-1986 directing its officers to take the employees working on normal muster roll in the office of the former public works department on work charge establishment subject to the terms and conditions of the Resolution dated 4-7-73. The benefits of relaxation which are available under item no. 5 of the Resolution dated 4-7-73 on the post of Telephone Operator, Clerk or such other posts possessed with the qualification of S.S.C. are not available to employees who are working on the nominal Muster Roll as daily rated employees to the posts of work-charged establishments and it was resolved that the employees who had rendered services as daily wagers for five years by 3-1-1983, such daily wagers would also be extended the benefits of former PWD's resolution dated 4-7-73 and fulfil the other requirements as applicable to the posts.

4. Learned Counsel for the petitioner pressed this petition mainly on two grounds ; (1) that the petitioner has been discriminated which amounts to violation of

fundamental rights guaranteed under Article 14 and 16 of the Constitution of India and (2) in terms of the resolution dated 7-8-1986 the petitioner is entitled to be appointed on the post of clerk.

5. The respondents have filed an affidavit-in-reply. But they have not made clear in the affidavit-in-reply that why the petitioner was not entitled to be appointed on the post of clerk. It is only asserted that the petitioner was working on the post of "Suthar" (carpenter) with effect from 21-8-1980 and prior to that date he was working as daily wager on Muster Roll. It is also ascertained in para 4 (B) of the affidavit-in-reply that for clerical post pre-service examination Rules etc. are required to be undergone and passed. Learned Counsel for the respondent could not show any rules and regulations even any Circular for passing pre-service examination for clerical post. In para 7 of the Affidavit-in-reply it is also asserted that all the requests of the petitioner for absorbing in work charge post of clerk, karkoon, telephone operator etc. could not be considered in light of provision of Para 5 of G.R. dated 4-7-1973 as he was over aged as his birth date being 1-6-47. The copy of the resolution dated 4-7-1973 has been annexed with the rejoinder. In para 5 of the Resolution dated 4-7-73 it is stated that the relaxation which came to be accorded as per condition no. 3 and 4 is extended for the post of Telephone Operator, Clerk etc., the recruitment rules for which provide the qualification of S.S.C. In Clause 3 and 4 of the GR dated 4-7-73 there is no bar of any age. Moreover, it has been relaxed for the post of Telephone Operator, Clerk etc. In para 8 of the affidavit-in-reply it is also asserted that the Government has issued orders to absorb daily wage mazdoor as clerks etc. vide G.R. dated 1-8-1986. But this provision can be implemented only when there is vacancy in such posts or new recruitment is made for such posts. At the time when 10 persons were promoted to next higher post admittedly there was vacancy and the petitioner was not given work charge of clerks as promotion to the higher post. The respondents could not show any reasonable ground for discriminating and not promoting the petitioner to higher post. As such, the petitioner is entitled to be absorbed in the higher post. As other persons and similarly situated persons have already been promoted to the higher post, the petitioner is also entitled to the same on the basis of the resolution dated 1-8-1986. As per GR dated 1-8-86 the petitioner had requisite qualification of S.S.C. and five years' experience and hence he was also entitled to be promoted to the post of Telephone Operator, Clerk.

The petitioner has at least been denied his right even as per G.R. dated 1-4-1986. As such the petitioner is entitled for the benefit of GR dated 1-8-86 for promotion from that date.

6. Considering the facts and circumstances of this case, the petition is allowed and the respondents are directed to absorb the petitioner on the post of clerk, store keeper or Telephone Operator with effect from 1-8-1986 and to give all consequential benefits. Rule is made absolute to the aforesaid extent, with no order as to costs.

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